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Scottish Property Law 2017

Andrew J M Steven*

Introduction

Four hundred years ago the old Scottish Parliament passed the Registration Act 1617. This established the Register of Sasines, one of the oldest registers of land in the world.¹ Behind the Act was a policy of reducing the potential for fraud by those selling land. This can be seen from its opening few sentences:

“Oure Souerane Lord Considdering the gryit hurt sustened by his Maiesties Liegis by the fraudulent dealing of pairties who haveing annaliet thair Landis and ressaut gryit soumes of money thairfore Yit be thair vniust concealing of sum privat Right formarie made by thame rendereth subsequent alienatioun done for gryit soumes of money altogidder vnprofitable whiche can not be avoyded vnles the saidis privat rightis be maid publict and patent to his hienes liegis FOR remedie whereoff and of the manye Inconvenientis whiche may ensew thairupoun HIS Maiestie with aduyis and consent of the estaittis of Parliament statutes and ordanis That thair salbe ane publick Register . . .”.²

There shall be a public register.³ Encapsulated in these few words is a concept that remains at the heart of property law today: publicity. It is a constant. But not everything stays the same and in this landmark year for Scottish property law it is worth taking stock as to recent developments and to assess where we are today.

Four areas will be considered: (1) the law of heritable property; (2) the law of moveable property; (3) property law in practice; and (4) academic property law. Reference will be made to the work of the Scottish Law Commission where appropriate, given my current role as a Law Commissioner. There will then be some concluding thoughts.

The law of heritable property

Land law has been the subject of huge statutory change since the start of the new millennium. Three landmark pieces of legislation came fully into force on 28 November 2004: the Abolition of Feudal Tenure etc. (Scotland) Act 2000; the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004. All three Acts are based on reports of the Scottish Law Commission.⁴ The feudal system was abolished without any real controversy, partly because the 2000 Act was the final

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¹ Indeed, it is claimed to be the “first land register in the world”. See <https://www.ros.gov.uk/about-us/our-history>.

² For a modern translation, see <http://www.rps.ac.uk/trans/1617/5/30>.

³ The wording is not unlike section 1(1) of the Scotland Act 1998.

⁴ Scottish Law Commission, *Law of the Tenement* (Scot Law Com No 162, 1998); Scottish Law Commission, *Abolition of the Feudal System* (Scot Law Com No 168, 1999); and Scottish Law Commission, *Real Burdens* (Scot Law Com No 181, 2000).

stage in a dismantlement which had been underway for centuries and partly because it was carefully framed to avoid any challenges based on Article 1 Protocol 1 of the European Convention on Human Rights.

The 2003 Act codified the law of real burdens and made important reforms to the law of servitudes. It too may be judged a success, although the courts, including the Lands Tribunal, have taken time to reach a settled interpretation of some of its provisions. I have in my mind particularly the principal test for interest to enforce real burdens: “material detriment”.⁵ The bar was originally set too high.⁶ But more recently the Lands Tribunal has opined that “material” should be interpreted as the opposite of “immaterial”.⁷

A provision in the 2003 Act which is causing significant difficulty in practice is section 53, which confers implied rights of enforcement on neighbouring proprietors where there is a “common scheme” and the properties are “related”. The term “common scheme” is not defined, but it is a concept which was recognised prior to the 2003 Act and there is some case law that can be drawn upon to interpret it.⁸ More problematic is the term “related”. This is a subjective term which is to be inferred from the circumstances of the case, with section 53(2) giving a list of non-exhaustive indicators, including the properties being subject to the same deed of conditions or being flats in the same tenement. In the important 2016 case of *Thomson’s Executrix*⁹ the Lands Tribunal drew on two of the other listed indicators – there being an obligation for common maintenance of a facility and there being shared ownership of common property – to hold that an immediately neighbouring property was “related” because the boundary wall was common and had to be mutually maintained. But the other houses in the same road were held not to be “related” despite being subject to the same common scheme of burdens. Ultimately, however, each case must be decided on its individual facts.

Section 53 notoriously did not feature in the draft Scottish Law Commission Bill which formed the basis of the 2003 Act. It was added by the then Scottish Executive, which was concerned that without it too many real burdens would not survive feudal abolition.¹⁰ But its inherent opaqueness clashes with another fundamental principle of property law: certainty. When the Justice Committee of the Scottish Parliament reviewed the 2003 Act in 2013 it recommended that the provision should be referred back to the Scottish Law Commission.¹¹ The Scottish

⁵ Title Conditions (Scotland) Act 2003 s 8(3)(a).

⁶ *Barker v Lewis* 2007 SLT (Sh Ct) 48 affd 2008 SLT (Sh Ct) 17.

⁷ *Franklin v Lawson* 2013 SLT (Lands Tr) 81 at para [10].

⁸ See in particular *Russel Properties (Europe) Ltd v Dundas Heritable Ltd* [2012] CSOH 175.

⁹ 2016 GWD 27-494.

¹⁰ See K G C Reid, “New enforcers for old burdens” in R Rennie (ed), *The Promised Land: Property Law Reform* (2008) 71 at 76-78.

¹¹ The report is available at

http://www.parliament.scot/S4_JusticeCommittee/Reports/juR-13-08-w-rev.pdf.

Government accepted this recommendation and the Commission is expected to commence work on it in the near future.¹²

The Tenements (Scotland) Act 2004 has significantly improved the law in relation to flats and in particular their management. It has attracted a small but growing case law and rather like the Title Conditions Act some of the decisions have not always mastered it.¹³

Ten years after feudal abolition another significant change to our land law was wrought when the Land Registration etc. (Scotland) Act 2012 came fully into force on 8 December 2014.¹⁴ Based too on a report of the Scottish Law Commission it consigned the conceptually-problematic and inadequate Land Registration (Scotland) Act 1979 to history. The “Midas touch”, under which any disposition given effect to by the Keeper by registration transferred ownership, even if it was a forgery or granted by a non-owner, was replaced with the rule expressed in section 86 of the 2012 Act. It enables good faith acquirers to rely on the register, subject to certain qualifications, in particular that the granter¹⁵ of the disposition in their favour has been in possession for at least a year. Thus a forged disposition bearing to be by A (the true owner) in favour of B does not make B owner. But if C acquires in good faith from B, C becomes owner. For most transactions, which do not involve forgeries or otherwise bad dispositions, the change of rule makes no difference. But in the difficult transactions it draws a better balance between the two innocents – A and C – the old law.

The 2012 Act has made other important changes to land registration law, notably in embracing digital technology and in introducing advance notices, which have generally replaced letters of obligation.¹⁶ It also has the fundamental objective of speeding up the completion of the Land Register and thus enabling the final closure of the Register of Sasines. Section 29 facilitates this by introducing “Keeper-induced registration”. In other words, the Keeper at her discretion can insist that land is transferred into the Land Register. The Scottish Government has announced a very ambitious objective of completing the Land Register by the end of 2024.¹⁷ As of 2015 only 59% of titles had been transferred from the Register of Sasines, despite the Land Register being operational since 1981. If the 2024 deadline is to stand any chance of being met, the next seven years will require a huge number of Keeper-

¹² Section 53 is also currently the subject of empirical work by Bernadette O'Neill, a doctoral student at the University of Glasgow.

¹³ See e.g. *Garvie v Wallace* 2013 GWD 38-734 (on liability for repairs), discussed in K G C Reid and G L Gretton (eds), *Conveyancing 2013* (2014) 156-163.

¹⁴ See generally, K G C Reid and G L Gretton, *Land Registration* (2017).

¹⁵ Or predecessor.

¹⁶ See A Stewart, “A New Era in Conveyancing: Advance Notices and the Land Registration etc. (Scotland) Act 2012” in F McCarthy, J Chalmers and S Bogle (eds), *Essays in Conveyancing and Property Law in Honour of Professor Robert Rennie* (2015) 141-164.

¹⁷ See J King, “Completion of the Land Register: The Scottish Approach” in McCarthy, Chalmers and Bogle (eds), *Essays in Conveyancing and Property Law in Honour of Professor Robert Rennie* 317-344.

induced registrations, a process with which those working in conveyancing will require to become familiar.

Thus far I have mentioned only developments in land law which have been precipitated by work of the Scottish Law Commission. Within the space constraints of this article, I will confine myself to mentioning two other matters.

The first is land reform, a subject which has become increasingly important in recent years. The Land Reform (Scotland) Act 2003 Part 1 introduced the right to roam, which resulted initially in some interesting case law on the parameters of the privacy exception,¹⁸ but now seems to be relatively uncontroversial.¹⁹ It has attracted significant interest among property lawyers in North America.²⁰

Parts 2 and 3 of the 2003 Act introduced the rural community and crofting community rights to buy. The Part 2 right has now been extended Scotland-wide by the Community Empowerment (Scotland) Act 2015. This right, in contrast to the Part 3 right, is a *pre-emptive* right. It depends on the owner of the land deciding to sell. The community body must have registered its interest in acquiring the land in the Register of Community Interests in Land.²¹ But the 2015 Act also inserted a new Part 3A into the 2003 Act which does not depend on a willing seller. Once in force it will allow a community body to apply to the Scottish Ministers for authority to buy land which the Scottish Ministers consider to be wholly or mainly abandoned or neglected, or being used or managed in a way which is detrimental to the environmental wellbeing of the relevant community.²² The application must be registered in a new register called the Register of Applications by Community Bodies to Buy Land.²³

The 2015 Act also enables community bodies to make an asset transfer request from certain public bodies such as local authorities.²⁴ The public bodies are required to publicise a “Register of Land” listing the land that they own or lease in order to help community bodies which may wish to make a transfer request.²⁵ Another feature of the 2015 Act is that it is to require when the relevant provisions are brought into force, local authorities to make up a register of “common good” property in their area.²⁶

¹⁸ See in particular *Gloag v Perth and Kinross Council* 2007 SCLR 530 and *Snowie v Stirling Council* 2008 GWD 13-244.

¹⁹ The Land Reform Review Group Report of 2014 made only minor recommendations for change, which were implemented by the Land Reform (Scotland) Act 2016. See <http://www.gov.scot/About/Review/land-reform>.

²⁰ See J Lovett, “Progressive Property Law in Action: The Land Reform (Scotland) Act 2003” (2011) 89 Nebraska Law Review 739 and G Alexander, “The Sporting Life: Democratic Culture and the Historical Origins of the Scottish Right to Roam” 2016 University of Illinois Law Review 321.

²¹ Land Reform (Scotland) Act 2003 s 37.

²² Land Reform (Scotland) Act 2003 s 97C.

²³ Land Reform (Scotland) Act 2003 ss 97F and 97G.

²⁴ Community Empowerment (Scotland) Act 2015 s 79.

²⁵ Community Empowerment (Scotland) Act 2015 s 94.

²⁶ Community Empowerment (Scotland) Act 2015 s 102.

The Land Reform (Scotland) Act 2016 Part 5 will introduce another compulsory purchase right in favour of community bodies, in order to further sustainable development. An application to buy must be approved by the Scottish Ministers and registered in the Register of Applications by Community Bodies to Buy Land.²⁷ It will be interesting to see how broad an interpretation is given by Ministers to “sustainable development.” Finally, in relation to land reform, Part 3 of the 2016 Act makes provision for another new register, this time in relation to controlling interests in owners and tenants of land. Land reform is of course an inherently politically controversial area, but from a property law viewpoint the number of new registers being established is remarkable. The publicity principle is well and truly flourishing here.

The other matter I wish to mention is human rights. It is a subject which is very difficult to find in Scottish property law books published prior to devolution and the Human Rights Act 1998.²⁸ But things have strikingly changed. Acts of the Scottish Parliament involving property law, such as that on feudal abolition mentioned above, have been subject to careful pre-legislative scrutiny to ensure that they are human rights-proof.²⁹ And in settling property law disputes the court have to ensure that human rights are not infringed. Thus in 2016 when the Scottish Parliament Corporate Body raised proceedings to remove the “indycamp”³⁰ from its land, the occupants of the camp defended the action among other grounds on the basis of several articles of the European Convention of Human Rights.³¹ The defences did not succeed. But the case nevertheless illustrates the point that anyone working in Scottish property law today – be that land law or moveable property law - needs to be aware of human rights issues.

The law of moveable property

If Viscount Stair were to appear again in Scotland in 2017 he would find a land law radically different from that of the seventeenth century when he wrote his famous *Institutions*. The reasons for this are set out in the preceding section. For moveable property, however, it is questionable how much difference he would notice. Certainly, there is the Sale of Goods Act 1979 (formerly 1893) which harmonises the law of sale with that in England and Wales. One wonders what he would make of it. He would also surely struggle with the concept of the floating charge, but he would hardly be alone in that. And he would need to consider the impact of human rights laws. Elsewhere, however, the picture would be reassuringly familiar. The doctrines of original acquisition – occupancy, accession, commixtion, confusion and

²⁷ Land Reform (Scotland) Act 2016 s 52.

²⁸ Thus, by way of example, although not in a land law context, the subject is not treated in D L Carey Miller, *Corporeal Moveables in Scots Law* (1991) but is discussed at paras 1.23-1.25 of the second edition of that work, published in 2005.

²⁹ See A J M Steven, “Property Law and Human Rights” 2005 JR 293.

³⁰ That is to say an encampment occupied by campaigners for Scottish independence.

³¹ *Scottish Parliament Corporate Body v The Sovereign Indigenous Peoples of Scotland* [2016] CSOH 65 and 113 affd [2016] CSIH 81.

specification – have little changed.³² Delivery is still required for transfer of ownership of corporeal moveables other than by sale.

In relation to positive prescription the leading case is arguably one which Stair wrote about in his work: *Parishioners of Aberscherder v Parishioners of Gemrie*.³³ He expressed the view that it is authority for a forty-year rule.³⁴ Recent scholarship, however, has shown that it is unclear what he meant exactly. He may have believed that the forty-year period was a rule of negative prescription, which when coupled with the presumption of ownership arising from possession prevented recovery of the property by the former owner.³⁵ What is certain is that Scots law, unlike other jurisdictions, does not have a statutory rule expressly dealing with positive prescription of moveables. The Prescription and Limitation (Scotland) Act 1973 deals only with positive prescription in relation to heritable property. The result of such a gap is that a possessor of moveable property who is not the owner can never become owner by the passage of time, even if they have possessed for a long period entirely in good faith.

The Scottish Law Commission published a consultative memorandum on the subject in 1976,³⁶ but no report followed. It returned to the matter in a discussion paper in 2010,³⁷ followed by a report in 2012.³⁸ It recommended a twenty-year period. The possessor would require to be in good faith and without negligence both on acquiring possession and throughout the twenty-year period. The rule is relatively pro-owner as many other jurisdictions have shorter periods. The Commission proposed a second rule under which holders of property for a period of fifty years or more may acquire the property if the owner is not contactable exercising reasonable diligence. This rule is particularly aimed at museums which often struggle to manage their collections because they cannot dispose of items where title is unclear. The Scottish Government has consulted on implementation of the Commission's recommendations. The consultation responses were generally supportive, but a strong case was made for exempting property looted by the Nazis during the holocaust.³⁹ A decision on next steps is awaited.

³² As to the implications for this on body parts, see N R Whitty, "Rights of Personality, Property Rights and the Human Body in Scots Law" (2005) 9 EdinLR 194.

³³ (1633) Mor 10972.

³⁴ Stair, *Institutions* 2.12.13.

³⁵ See A R C Simpson, "Positive Prescription of Moveables in Scots Law" (2009) EdinLR 445 at 460-464.

³⁶ Scottish Law Commission, *Corporeal Moveables – Usucapion or Acquisitive Prescription* (Memorandum No 30, 1976).

³⁷ Scottish Law Commission, *Prescription and Title to Moveable Property* (Discussion Paper No 144, 2010).

³⁸ Scottish Law Commission, *Prescription and Title to Moveable Property* (Scot Law Com No 228, 2012).

³⁹ The responses are available at <https://consult.scotland.gov.uk/family-and-property-law/prescription-and-title-to-moveable-property/consultation/published-select-respondent>.

“The assignation itself is not a complete valid right, till it be orderly intimated to the debtor” wrote Stair.⁴⁰ This remains Scots law today. No intimation means no assignation. The law is otherwise in most other jurisdictions, because intimation can be cumbersome (such as where the one assignation assigns claims against one hundred debtors). Moreover, it is not possible in the case of future claims where there is no identifiable debtor. Reform of the law of assignation is at the heart of the Scottish Law Commission’s project on moveable transactions. It seeks also to reform another outdated and inadequate part of moveable property law: security. The floating charge and workarounds⁴¹ aside, the only way of creating a security over a corporeal moveable is by pledging it. Yet businesses can hardly operate without possession of their key assets such as computers and vehicles. In relation to incorporeal moveables, security can only be achieved by transfer. So shares and intellectual property have to become owned by the banks which has advanced the loan, with complex contractual arrangements being required in relation to matters such as dividends and licences.

The Commission issued a discussion paper in 2011⁴² and work is now well-advanced on a report and draft legislation.⁴³ It is likely to be recommended that assignation can be completed by registration as well as by intimation. Further, a new form of registered security right is to be proposed which would be non-possessory in respect of corporeal moveables and be available for incorporeal property such as shares and intellectual property too. The project is a challenging one because of its scale and complexity. Moreover, while formally about property law it is functionally about commercial law, where there are often arguments that harmonisation with English law is the way forward.⁴⁴ But with property law so dramatically different north and south of the border such an approach is inherently problematic. What is certain, however, is that the current law of moveable transactions casts Scottish law in an unfavourable light and reform is needed. While our law is attracting international attention for its cutting-edge developments in land reform and land registration, moveable property law is unfortunately a rather different story.

Property law in practice

While I am less qualified to comment on this matter due to not being involved in daily legal practice, two themes perhaps stand out most in relation to recent developments. The first is standardisation and the second is digitalisation. In relation to the first of these there are clearly benefits in using standard documentation as it makes transactions simpler and less expensive. There are now Scotland-wide standard missives for the purchase of residential property, the current

⁴⁰ Stair, *Institutions* 3.1.6.

⁴¹ Such as sale and leaseback.

⁴² Scottish Law Commission, *Moveable Transactions* (Discussion Paper No 151, 2011).

⁴³ See A J M Steven and H Patrick, “Reforming the Law of Secured Transactions in Scotland” in L Gullifer and O Akseli (eds), *Secured Transactions Law Reform: Principles, Policies and Practice* (2016) 253.

⁴⁴ J Hardman, “Some Legal Determinants of External Finance in Scotland: A Response to Lord Hodge” (2017) 21 EdinLR 30.

edition dating from May 2016.⁴⁵ I am reliably informed, however, that *de plano* acceptances remain almost unheard of and that it typically takes four weeks to conclude missives because purchasers first require to receive their offer of loan from their mortgage provider. For commercial property, the work of the Property Standardisation Group continues apace.⁴⁶ The group's latest project is adapting for Scotland a suite of commercial leases which was commissioned by the British Property Federation in England and Wales.

As to digitalisation, the Land Registration etc. (Scotland) Act 2012 has amended the Requirements of Writing (Scotland) Act 1995 to facilitate the "authentication" of electronic documents by electronic signature.⁴⁷ Solicitors can do this by means of a smart card issued by the Law Society of Scotland.⁴⁸ The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 enables electronic delivery of "traditional documents", in other words documents which are signed with pen and ink.⁴⁹

Neither of these developments preclude proceeding in time-honoured fashion by physically signing a document and delivering it in person or by post. But, in this, the four hundredth anniversary year of the Register of Sasines, Registers of Scotland are consulting on an approach which would make electronic signatures on electronic documents compulsory for the three deeds used most often in conveyancing: dispositions, standard securities and discharges of standard securities.⁵⁰ Under the proposals, the Keeper's computer system will produce a standardised deed template into which the relevant information is supplied by the solicitor applying for registration. The intention is that once the system becomes operational for a particular type of deed it will then become compulsory for that type of deed six months later, subject to limited exceptions.⁵¹ It remains to be seen what consultees will make of this, but it can hardly be doubted that developments in technology will bring further changes to property law in practice.

Academic property law

"The law of property was rather neglected".⁵² This is Professor David Walker's assessment in 1985 of academic work in this area in Scotland in the twentieth century. It is pleasing to see that the position has since been transformed. Property law today is arguably the engine room of Scots private law scholarship. The credit

⁴⁵ See <https://www.lawscot.org.uk/media/816883/Scottish-Standard-Clauses-Edition-2-.pdf>.

⁴⁶ See <http://www.psglegal.co.uk/>.

⁴⁷ See K G C Reid, *Requirements of Writing (Scotland) Act 1995* (2nd edn, 2015) 31-40.

⁴⁸ See S Brymer and J Ness, "Using your secure digital signature" (2016) 61 JLSS March/48.

⁴⁹ See H M MacQueen, C Garland and L Smith, "The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015" 2015 SLT (News) 111.

⁵⁰ See Registers of Scotland, *Digital Transformation: Next Steps* (2016) available at <http://www.gov.scot/Publications/2015/11/9619>.

⁵¹ *Digital Transformation: Next Steps* paras 1.8-1.11.

⁵² D M Walker, *The Scottish Jurists* (1985) 420.

for this is shared by a number of scholars. The last thirty years have seen significant publications by Professor William Gordon on land law,⁵³ Professor David Carey Miller on the law of corporeal moveables,⁵⁴ Professor Douglas Cusine and Professor Roderick Paisley on servitudes⁵⁵ and Professor Robert Rennie on leases.⁵⁶

It is likely, however, that future historians will particularly associate the revival of academic property law in Scotland with two names: Professor George Gretton and Professor Kenneth Reid. Their scholarship is well-known to anyone working in the area in Scotland and indeed internationally. Kenneth Reid's *The Law of Property in Scotland* (1996), which appeared firstly in 1993 as volume 18 of the *Stair Memorial Encyclopaedia*, is a seminal work. George Gretton too has published widely on matters of property law.⁵⁷

But there are further reasons why their contribution has been pivotal to the development of our property law. The first is their role as Law Commissioners.⁵⁸ Kenneth Reid served from 1995 to 2005 and during that period was responsible for the reports which led to the abolition of the feudal system and the reforms of real burdens and tenement law mentioned above. He later commenced the project on land registration, which George Gretton, who served from 2006 to 2011, took forward to a report. All of these reports were informed by their academic work on property law. In particular in relation to land registration they were responsible for the replacement of a scheme which, as mentioned above, was conceptually problematic and incoherent from the standpoint of ordinary Scottish property law with one now consonant with underlying principles.

The second reason has been the sheer depth of their engagement with property law scholars in other jurisdictions.⁵⁹ For example, the end of apartheid in South Africa enabled collaboration between academic private lawyers in Scotland and in that country in which they have played a leading role.⁶⁰ George Gretton and Kenneth Reid have also worked closely with academic property lawyers in the Netherlands and Belgium through the *Ius Commune* Research School network.⁶¹ Many doctoral

⁵³ W M Gordon, *Scottish Land Law* (1989). A second edition appeared in 1999 and a third edition volume one (with Scott Wortley) in 2009.

⁵⁴ D L Carey Miller, *Corporeal Moveables in Scots Law* (1991). A second edition (with David Irvine) appeared in 2005.

⁵⁵ D J Cusine and R R M Paisley, *Servitudes and Rights of Way* (1998).

⁵⁶ R Rennie et al, *Leases* (2015).

⁵⁷ See e.g. his important article "Ownership and its Objects" (2007) 71 *Labels Zeitschrift* 802.

⁵⁸ See further A J M Steven, "A Golden Era? The Impact of the Scottish Law Commission on Property Law" in W Barr (ed), *Modern Studies in Property Law: Volume 8* (2015) 13 at 16-18.

⁵⁹ Collaboration with colleagues from abroad of course has been part of the work of other property law scholars working in Scotland. The late and much-missed David Carey Miller deserves particular mention in this regard.

⁶⁰ See in particular R Zimmermann, D Visser and K Reid (eds), *Mixed Legal Systems in Comparative Perspective: Property and Obligations in Scotland and South Africa* (2004).

⁶¹ See <http://www.iuscommune.eu/startpagina.aspx?language=English>.

scholars from these countries have had invitations to Edinburgh and been assisted in their work.⁶²

The third reason is their practical support of younger scholars more generally. For over twenty five years their annual seminar on conveyancing developments in Scotland has attracted larger audience of practitioners. Since 2000 it has been published every year as a book.⁶³ The income generated from the fees for attending the annual conveyancing seminars⁶⁴ has allowed the Edinburgh Legal Education Trust (ELET) to fund numerous postgraduate scholarships in private law at the University of Edinburgh, several of which are now published as books.⁶⁵ It is noticeable that the subjects chosen by ELET scholars have primarily been in the field of property law.⁶⁶ One of the reasons for this is that George Gretton and Kenneth Reid have inspired students with their teaching.

George Gretton retired as Lord President Reid Professor of Law at Edinburgh in 2016.⁶⁷ But academic property law remains in a strong position because of the growing number of younger academics, a number of whom are former ELET scholars. At Glasgow, Dr Frankie McCarthy is engaging in important work on the interaction between property law and human rights.⁶⁸ At Aberdeen, Malcolm Combe has established a reputation as the “go-to” scholar on property law and land reform.⁶⁹ At Robert Gordon University, Dr Craig Anderson is building on his doctoral work in relation to the law of possession.⁷⁰ Again, at Glasgow, Dr Jill Robbie is supervising a path-breaking research project funded by Registers of Scotland on the interaction between land registration and privacy.⁷¹ A common feature of the work of these younger scholars is their engagement with social media through the use of

⁶² See e.g. W Loof, *Of Trustees and Beneficial Owners* (2016) i.

⁶³ The latest volume is K G C Reid and G L Gretton, *Conveyancing 2016* (forthcoming, 2017).

⁶⁴ And other update seminars.

⁶⁵ See R G Anderson, *Assignment* (2008); C Anderson, *Possession of Corporeal Moveables* (2015) and J Robbie, *Private Water Rights* (2015). See also A Burrows, “Challenges for Private Law in the Twenty-First Century” in K Barker, K Fairweather and R Grantham (eds), *Private Law in the 21st Century* (2017).

⁶⁶ E.g. Alasdair Peterson has recently successfully completed a doctorate on positive prescription and servitudes; Alisdair MacPherson is in the final year of his doctoral studies on floating charges; Gillian Couper has begun postgraduate research studies on roads law and Andrew Sweeney is researching the landlord’s hypothec.

⁶⁷ His successor is Professor Alexandra Braun, a trusts and succession specialist, and a leading comparatist. A *Festschrift* in honour of Professor Gretton, which is being co-edited by Dr Ross Anderson, Dr John MacLeod and the present writer is to appear later in 2017.

⁶⁸ See e.g. F McCarthy, “Human Rights and the Law of Leases” (2013) 17 EdinLR 184.

⁶⁹ See e.g. M M Combe, “The Land Reform (Scotland) Act 2003: another answer to the Scottish land question” 2016 JR 291.

⁷⁰ See C Anderson, “The Protection of Possession in Scots Law” in E Descheemaeker (ed), *The Consequences of Possession* (2014) 111-140.

⁷¹ See http://www.gla.ac.uk/schools/law/newsandevents/headline_481785_en.html.

online blogs,⁷² Twitter⁷³ and YouTube.⁷⁴ This helps matters of Scottish property law reach a far wider audience than lawyers in Scotland and is to be commended. In addition, law students nowadays are assisted by dedicated text books on property law.⁷⁵ When I studied the subject for the first time twenty-five years ago, such books simply did not exist. In summary, academic property law in Scotland in 2017 is in a strong position. But, it would be folly to be complacent. Those of us who teach the subject must consistently seek to make it stimulating for students in order to attract future scholars.

Conclusion

From this short survey of recent developments, it can be concluded that Scottish property law is currently in a vibrant state. The work of the Scottish Law Commission has been particularly important in relation to the modernisation and improvement of our land law. But clearly there is more work to be done. Some deficiencies in the law of moveable property have been mentioned, but it is also worth stating that the Commission now has a full workload ahead of it in relation to two important areas of land law: heritable securities and leases. Elsewhere, the land reform agenda continues to evolve and technological developments bring ongoing change. But publicity as the cornerstone of property law persists. One wonders what this area of Scottish law will look like in another four hundred years. I venture to suggest that it may be a mix of the familiar and unfamiliar.

⁷² See e.g. Malcolm Combe's blog, <https://basedrones.wordpress.com/>.

⁷³ See e.g. @MalcolmCombe; @drfmccarthy; and @JillJRobbie. Even the present writer is now tweeting: @andrewjmsteven.

⁷⁴ See e.g. Dr Robbie's video on her research project on private law and water rights, available at <https://www.youtube.com/watch?v=D6wgLTARwpM>.

⁷⁵ In particular G L Gretton and A J M Steven, *Property, Trusts and Succession* (2nd edn, 2013) and C Anderson, *Property: A Guide to Scots Law* (2016).